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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,329

09/18/2003

Thomas Richard Tepe

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12/22/2005

ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
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EXAMINER

RONESI, VICKEY M

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,329

Applicant(s)

TEPE, THOMAS RICHARD

Examiner

Vickey Ronesi

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/7/2005 has been entered.
2. All outstanding prior art rejections are withdrawn in light of applicant's amendment filed 10/7/2005.
3. The declarations filed under 37 CFR 1.132 on 9/2/2005 and 10/7/2005 have been entered and are found persuasive to overcome the outstanding 35 USC 112(1) rejection concerning new matter.

With respect to the lab notebook pages, they are now considered to be sufficient to establish that the amounts of comonomer recited in the instant claims are in wt %. Note that the amounts of EA, Lipo 1, MAA, and AA add up to 100 wt %. In the interest of completeness of the record, the following calculations are provided:

Sample ID 38100

	Data from Declarations filed 9/2/05 and 10/7/05		Examiner's Calculation
	Amount (g)	Amount (wt %)	Amount (wt %)
EA	300.0	60.0	60.0
Lipo 1	50.0	10.0	10.0
MAA	35.7+14.3	10.0	10.0
AA	100.0	20.0	20.0
DAP	1.00	0.20	0.20
n-DDM	0.50	0.10	0.10

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Sample ID 3896

	Data from Declarations filed 9/2/05 and 10/7/05		Examiner's Calculation
	Amount (g)	Amount (wt %)	Amount (wt %)
EA	300.0	60.0	60.0
Lipo 1	50.0	10.0	10.0
MAA	35.7+14.3	10.0	10.0
AA	100.0	20.0	20.0
DAP	0.50	0.1	0.1

Sample ID 3824

	Data from Declarations filed 9/2/05 and 10/7/05		Examiner's Calculation
	Amount (g)	Amount (wt %)	Amount (wt %)
EA	297.5	42.0	42.0
Lipo 1	127.5	18.0	18.0
MAA	246.9+36.5	40.0	40.0
DAP	1.42	0.20	0.20
n-DDM	0.00	0.00	0.00

4. Given that applicant's and examiner's calculations of comonomer amount give the same result (see cols. 3 and 4), the declarations are considered sufficient to overcome the outstanding 35 USC 112(1) rejection. Nevertheless, new grounds of rejection, including an objection to the specification, have been set forth below. Upon an updated search, relevant art was uncovered which has been utilized in the following prior art rejection.

Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to support the basis for the amount of comonomer is weight %.

Appropriate correction is required.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8 and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fealy et al (US 5,656,257) in view of Laryea et al ("Stabilized Shampoo/Surfactant Suspensions," cited on IDS dated 12/29/2003).

Fealy et al discloses a shampoo and conditioning composition comprising 5-70 wt % of a shampooing agent (i.e., surfactant) (col. 8, lines 17-30; col. 13, lines 45-46) and 0.15-5 wt % of an acrylate copolymer comprising 20-50 wt % of acrylic or methacrylic acid (col. 13, lines 51-52), 0.5-25 wt % of a lipophilically modified (meth)acrylate (col. 13, lines 53-67), and 40-60 wt % of a C1-C4 alkyl (meth)acrylate—preferably ethyl acrylate (col. 3, line 26). Fealy et al explicitly teaches the use of Aculyn 22® as the acrylate copolymer (col. 3, line 52).

Fealy et al fails to disclose the addition of a clay to its shampoo and conditioning composition.

Laryea et al discloses shampoo compositions and teaches that a synergistic suspension system comprising hydrophobic terpolymers such as Aculyn 22® and Aculyn 28® (page 2, paragraphs 4 and 5) and a hydrophilic clay which allows for long term stability of many different types of dispersed particles and/or droplets in clear or opaque compositions for shampoo (page 1, paragraphs 1-4), wherein the exemplified composition comprises 0.9 wt % Aculyn 28® (a

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copolymer containing acrylic acid, methacrylic acid, methacrylate, and lipophilic methacrylate monomers) and 0.25 wt % colloidal hectorite clay (page 3, paragraphs 1-2).

Given that Laryea et al teaches the improved long term stability had by using both an acrylate copolymer and clay as thickening agents and further given that both Fealy et al and Laryea et al teach the use of the same acrylate copolymer (i.e., Aculyn 22®), it would have been obvious to one of ordinary skill in the art to utilize clay in Fealy et al's shampoo and conditioning composition to obtain the advantageous synergistic effects had by using both an acrylate copolymer like Aculyn 22® and clay taught by Laryea et al and thereby arrive at the presently claimed invention.

Note that applicant's showing that the use of ethyl acrylate as the C2-C4 alkyl (meth)acrylate in the acrylate copolymer and the criticality of the presently claimed range of C2-C4 alkyl (meth)acrylate is not sufficient to overcome the new prior art of record, i.e., Fealy et al. With respect to ethyl acrylate, applicant's inventive and comparative data only compare ethyl acrylate and methyl acrylate and therefore cannot serve to distinguish from Fealy et al which teaches preferably the use of ethyl acrylate, methyl methacrylate, and butyl acrylate (col. 3, lines 25-26). With respect to the amount of C2-C4 alkyl (meth)acrylate, Fealy et al teaches a range of 40-60 wt % for the amount of C1-C4 alkyl (meth)acrylate which clearly falls within the presently claimed range of 40-70 wt %.

If applicant wishes to establish criticality for acrylic acid rather than methacrylic acid, note that the example in row 5 of Table 1 on page 10 of applicant's specification only contains methacrylic acid in the acrylate copolymer yet exhibits the desirable % viscosity change at low shear and relatively low NTU values.

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Contact Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

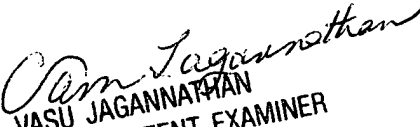
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12/14/2005

vr




VASU JAGANNATHAN
SUPERVISORY PATENT EXAMINER
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